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Kyan Flynn, and Carlyn Lindsten

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF
CALIFORNIA

CHAD MCKINNEY, an individual,
Plaintiff,

v.

APOLLO GROUP, INC.,
UNIVERSITY OF PHOENIX, a
Corporation, MECHELLE
BONILLA, an Enrollment Manager
at UNIVERSITY OF PHOENIX,
KYAN FLYNN, Director of
Enrollment at UNIVERSITY OF
PHOENIX, APRIL ALCORN, an
Employees Relations Consultant at
UNIVERSITY OF PHOENIX,
CARLYN LINDSTEN, Associate
Director of Enrollment at
UNIVERSITY OF PHOENIX

Defendants

CASE NO. 07-CV-2373 WQH CAB

**EXHIBITS TO DECLARATION OF
KYAN FLYNN IN SUPPORT OF
MOTION TO DISMISS
PLAINTIFF'S COMPLAINT OR, IN
THE ALTERNATIVE, MOTION
FOR MORE DEFINITE
STATEMENT**

**[FRCP 12(b)(2); 12(b)(5); 12(b)(6);
12(e).]**

Date: October 20, 2008

Time: 11:00 a.m.

Courtroom: 4

Judge: Hon. William Q. Hayes

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

DATE OF FILING: December 19, 2007

Snell & Wilmer
 LLP
 LAW OFFICES
 600 Anton Boulevard, Suite 1400
 Costa Mesa, California 92626-7689
 (714) 427-7000

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INDEX

Exhibit	Description	Page
1	McKinney Summons and Complaint served via Mail	2
2	Envelope of McKinney service of Summons and Complaint	23

EXHIBIT 1

**Fax Cover Sheet**

San Diego Campus, Kearny Mesa Learning Center
3890 Murphy Canyon Road, Suite 100
San Diego, CA 92123
(tel) 800-473-4346
(fax) 858-576-0086

Recipient: NATE HICKS

Recipient Fax Number: 714 427-7799

Sender's Name: KYAN FLYNN

Date: 8.28.08

Pages (including cover sheet): 21.

Comments: RE: CHAD McKinney

University of live for today, learn for tomorrow

phoenix.edu

AO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

District of California

Chad McKinney, Pro Se

SUMMONS IN A CIVIL CASE

V.

APOLLO GROUP INC., UNIVERSITY OF PHOENIX, a Corporation, - MICHELLE BONILLA, an
Enrollment Manager at UNIVERSITY OF PHOENIX, KYAN FLYNN, Director of Enrollment at
UNIVERSITY OF PHOENIX, APRIL AL CORN, an Employee Relations Consultant at UNIVERSITY OF
PHOENIX, CARLYN LINDSTEN, Associate Director of Enrollment at UNIVERSITY OF PHOENIX

CASE NUMBER:

07 CV 2573 WQH CAB

TO: (Name and address of Defendant)

University of Phoenix
Attention of: Kyan Flynn
3890 Murphy Canyon Rd.
San Diego, CA 92123

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se
6266 Madeline Street Apt. No. 61
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for
the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period
of time after service.

W. SAMUEL HAMRICK, JR.

JAN 15 2008

CLERK

DATE

(By) DEPUTY CLERK

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Chad McKinney, 6266 Madeline Street Apt. 61, San Diego CA
92115-5630 Tel- 619-634-3566

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

CHAD MCKINNEY, PRO SE (contact information listed above)

DEFENDANTS

APOLLO GROUP INC., MECHELLE BONILLA,
KYAN FLYNN, APRIL ALCORN, CARLYN LINDSTEN

County of Residence of First Listed Defendant SAN DIEGO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Consumer Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

False Claims Act (31 USC §§ 3729-3733) & CIVIL RIGHTS ACT 1964 & 1991 TITLE VII AMENDMENTS

Brief description of cause:

RETALIATION-WRONGFUL TERMINATION, FALSE CLAIMS ACT- RETALIATION

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 250,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/17/2007
FOR OFFICE USE ONLY

LA M K

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

1
2 Chad McKinney
3 Pro Se
4 6266 Madeline St Apt #61
5 San Diego, CA 92115
6 619-634-3566

7 THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

8 CHAD MCKINNEY, an individual,

9
10
11 Plaintiff,

) CIV. Case No. 07-cv-2373

)
) FOR VIOLATION OF FEDERAL
) FALSE CLAIMS ACT AND FOR
) VIOLATION OF THE
) THE CIVIL RIGHTS ACT 1964 AND
) THE AMENDMENTS TO TITLE
) VII OF THE CIVIL RIGHTS ACT OF
) 1991

)
) RETALIATION- WRONGFUL
) TERMINATION &
) EMPLOYMENT DISCRIMINATION
) CIVIL ACTION

12
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15
16 v.

17 APOLLO GROUP INC., UNIVERSITY OF
18 PHOENIX , a Corporation, MECHELLE
19 BONILLA, an Enrollment Manager at
20 UNIVERSITY OF PHOENIX, KYAN
21 FLYNN, Director of Enrollment at
22 UNIVERSITY OF PHOENIX, APRIL
23 ALCORN, an Employee Relations
24 Consultant at UNIVERSITY OF PHOENIX
CARLYN LINDSTEN, Associate Director of
Enrollment at UNIVERSITY OF PHOENIX

Defendants

) Demand for Trial By Jury Pursuant
) to U.S. Constitution, 7th Amendment

) Filed:
) December 19th, 2007

STATEMENT OF THE CASE

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7 This instant arises primarily from the defendant's discriminatory behavior against the
8 plaintiff while the plaintiff was employed by the defendant, including but not limited to
9 the wrongful termination of the plaintiff. More specifically, this case arises out of the
10 defendant retaliating against the plaintiff in violation of the Federal False Claims Act
11 § 3729. In 1986, Congress added provisions in 31 U.S.C. Sec. 3730(h): "Any
12 employee who is discharged, demoted, suspended, threatened, harassed, or in any other
13 manner discriminated against in the terms and conditions of employment by his or her
14 employer because of lawful acts done by the employee on behalf of his employer or
15 others in furtherance of an action under this section, including investigation for,
16 initiation of, testimony for, or assistance in an action filed or to be filed under this
17 section, shall be entitled to all relief necessary to make the employee whole."

18
19 The Defendant's discriminatory behavior against the Plaintiff is also in violation of
20 Title VII of the CIVIL RIGHTS ACT of 1964 and amendments to Title VII of the
21 CIVIL RIGHTS ACT of 1991.

22
23 Various common laws were also broken by the defendant in violation of the rights of
24 the plaintiff.

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5 2.

JURISDICTION

6
7 The plaintiff asks the Court to recognize the jurisdiction of this case as the case meets the
8 requirement of jurisdiction under the Federal False Claims Act and Title VII of the Civil
9 Rights act of 1964 as amended in 1991. It should be further noted that the EEOC
10 recognized jurisdiction in evaluating the case and submitted to the plaintiff a 90 day
11 "right to sue" letter.
12

13 3.

VENUE

14 The employer APOLLO GROUP INC, UNIVERSITY OF PHOENIX, is located
15 in San Diego at the following locations.
16

17 Apollo Group, Inc
18 University of Phoenix
19 3890 Murphy Canyon Road
20 San Diego, CA 92123

21 Apollo Group, Inc
22 University of Phoenix
23 1230 Columbia Street
24 San Diego, CA 92101

The venue is proper for this action.

1
2 4. TIMELINESS OF PETITION

3 This action is timely filed within the statute of limitations as provided by the EEOC. As
4 required by law, a complaint was filed with the EEOC before filing this action.

5 This action is also timely within the Federal False Claims act.

6
7 5. PARTIES

8 Plaintiff Chad McKinney is an American citizen residing at 6266 Madeline St., APT #61,
9 San Diego, CA, 92115.

10 Defendant Apollo Group Inc., University of Phoenix is located at:

11 Apollo Group, Inc
12 University of Phoenix
13 3890 Murphy Canyon Road
14 San Diego 92123

15 Defendant, MECHELLE BONILLA, Enrollment Manager of UNIVERSITY PHOENIX, was
16 employed at the San Diego office located at:

17 Apollo Group, Inc
18 University of Phoenix
19 1230 Columbia Street
20 San Diego, CA 92101

21 Defendant KYAN FLYNN, Director of Enrollment of UNIVERSITY PHOENIX, and Defendant
22 CARLYN LINDSTEN, Associate Director of Enrollment of UNIVERSITY OF PHOENIX, both
23 were employed at the San Diego office located at:

24 Apollo Group, Inc
 University of Phoenix
 3890 Murphy Canyon Road
 San Diego 92123

1
2 Defendant APRIL ALCORN a Human Resources Manager of UNIVERSITY OF
3 PHOENIX, was employed at the corporate headquarters, located at:

4 Apollo Group, Inc
5 University of Phoenix
6 4615 E. Elwood St.
7 Phoenix, AZ 85040

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STATEMENT OF FACTS

- 1) Plaintiff was hired on August 7th 2006 as an Enrollment Counselor for the University of Phoenix. Plaintiff was interviewed by Kyan Flynn, Barbara Keramati, and Andrea Beltran.
- 2) During the interviewing process Plaintiff was told the job was a salary position and there was no mention to the Plaintiff that his salary would decrease if the Plaintiff did not meet quotas for new applicants.
- 3) It was communicated to Plaintiff that his salary could increase if he were to successfully meet the goals of the defendant's employment matrix. The specifics of the matrix were not outlined to the Plaintiff during the interview. Kyan Flynn did communicate to the Plaintiff that "laborious efforts, dedication, and job competency" were required for an increase in salary to take effect.

- 1 4) After two months of employment the Plaintiff discovered that his salary was
2 based on enrollment quotas via discussions of the "employment matrix" and
3 discussions with other employees.
4
- 5 5) The Plaintiff received harassing emails, vocalization of threats (from his
6 manager), and was entered into contests to encourage sales quotas. Rewards,
7 bonuses [of monetary value], and/or special treatment were given to those
8 who enrolled the most students.
9
- 10 6) The Plaintiff, after discovering that the Higher Education Act prohibits
11 universities from using sales quotas for enrollment counselors, mentioned this
12 concern to his manager, and direct supervisor, Mechelle Bonilla.
13
- 14 7) Even after the Plaintiff mentioned that he believed that the Higher Education
15 Act prohibited sales quotas for Universities, the Plaintiff's manager still asked
16 the Plaintiff to meet a weekly program called "Osira", which was a sales goals
17 of: 3.5 appointments, 1.5 applications, and 2 referrals per week. It was often
18 communicated to the Plaintiff that sales quotas were required. In several one
19 on one meetings the Plaintiff's first manager, Barbara Keramati, reminded the
20 Plaintiff that he was not only an employee but also a student with the
21 University, and that his tuition reimbursement would be revoked if he failed to
22 meet the "goal" of enrolling at least four students per month. Ms. Keramati
23 stated to the Plaintiff on several occasions that she did not wish to enforce that
24 revocation and encouraged the Plaintiff to meet a quota.

1
2 8) On the 19th of December, 2006 it was communicated via an email written by
3 the Plaintiff's manager, Barbara Keramati, and forwarded to the Directors of
4 the company; Kyan Flynn and Kim Savich that the Plaintiff's job performance
5 was exceptional: "kudos to Chad McKinney...Chad you are my hero!!!!!!!!!! 7
6 appointments and 6 apins [applications]..can it get any better that that?" Other
7 employees were even encouraged to contact the Plaintiff for advice on how to
8 improve their performance.

9
10 9) On a multitude of occasions from the end of February 2007 until the Plaintiff
11 was terminated, he received multiple harassing emails from the Associate
12 Director of Enrollment; Carlyn Lindsten. These emails threatened reductions
13 in pay if enrollment quotas were not met, questioned the level of dedication of
14 the Plaintiff and asked the Plaintiff if he was truly serious about his career
15 with the company. She also asked why quotas for student enrollment were not
16 met, and asked the Plaintiff to "step it up" in condescending threatening
17 fashion. These types of emails were sent out almost daily, and sometimes
18 multiple times in one day.

19
20 10) The Plaintiff felt the enrollment practices of this company presented an ethical
21 dilemma and decided to apply for a position as an Academic Counselor in the
22 Academic department. He was encouraged to do so by his first manager
23 Barbara Keramati via email and a one on one conversation. In late February
24

1 2007 the Plaintiff submitted his resume to Thomas Graneau Jr., an employee
2 of the Defendant.

3
4 11) Around the time of late February 2007 but no later than that of early March
5 2007, the Plaintiff was transferred from the Kearny Mesa campus to the
6 downtown campus by Associate Director of Enrollment Carlyn Lindsten.
7 This transfer was soon after the Plaintiff again voiced concerns to Ms.
8 Lindsten of the legality of the quota system and the Defendant's San Diego
9 office. .

10
11 12) The Plaintiff was granted an interview for the Academic position and met with
12 Thomas Graneau Jr. and Colleen Bjornson in early March. He was not
13 selected for the position of Academic Counselor.

14
15 13) Although Mechelle Bonilla was not the Plaintiff's manager for the month of
16 February of 2007, she told the Plaintiff to sign a "Discussion Memo" that
17 stated his performance fell below expectations of the appointments seen,
18 applications, and students whom started class and that "failure to improve
19 your performance may result in further disciplinary action up to and including
20 termination."

21 Although the Plaintiff did not agree with the quota system he accepted the
22 reprimand and signed the Discussion Memo.
23
24

1 14) Many of the Plaintiff's applicants were subsequently transferred to other San
2 Diego staff to maintain in disregard to corporate policy. This started on the
3 26th of March, 2007, soon after the plaintiff questioned the legality of the
4 university's enrollment practices in a previous conversation in early March
5 with his second manager; Mechelle Bonilla.

6
7 15) The Plaintiff's "lead base" [number of students in his data base available for
8 contact] was reduced drastically by his manager Mechelle Bonilla from March
9 2007 until he was terminated. Several of these students were transferred and
10 assigned to Alison Herring.

11
12 16) Plaintiff's work schedule was changed without consultation of Plaintiff by
13 the Associate Director of Enrollment Carlyn Lindsten on the 26th of March,
14 2007 in order to make everyone available for "QC" [Qualifying Center]
15 telephone calls to "help everyone hit their goal!" The amount of QC calls the
16 Plaintiff received dwindled from March onward. Plaintiff did not receive any
17 QC calls in June or July of 2007.

18
19 17) Plaintiff was asked and pressured by San Diego management to sign
20 documents that the Plaintiff felt were untrue relating to his performance.

21
22 18) Plaintiff's salary was reduced from \$37,000 to \$35,500 in May. Defendant
23 states that the reasons were because he did not "meet goal" in May. Plaintiff
24 contacted the independent office of Ombuds Services anonymously in the

beginning of June 2007 to research his options in the hopes of protecting himself from further retaliatory acts taken by the company against him for voicing concerns about the company policy of using quotas.

19) Plaintiff submitted evidence to the Human Resources department, Employee Relations Consultant; April Alcorn, on June 11, 2007 supporting his claim that the San Diego office was using harassment and intimidation to get the plaintiff to quit employment or accept the sales quota system.

20) The Plaintiff was told in a telephone conversation on the 11th of June, 2007 by April Alcorn that the issue the Plaintiff described in San Diego would be resolved in two weeks.

21) On the 12th of June, 2007 April Alcorn sent an email stating to the Plaintiff: "I received your fax and will be looking into your concerns."

22) The university continued to create a hostile work environment for Plaintiff even after he demanded to HR that it cease and desist. He was harassed with emails threatening termination on the 20th of June, 2007 by co-worker Alison Herring and approved of by his manager Mechelle Bonilla stating that if he did not participate and perform adequately in a team "blitz" at 11:30 he could be terminated. Team "blitzs" are designated times [by the manager], three times a day, in which employees were expected to not leave their cubicle, and

1 make as many telephone dials as possible, and schedule as many students
2 possible for appointments. The subject title read "IF YOU DON[']T BLITZ
3 AT 11:30 MECHELLE SAYS YOU'RE FIRED!" The top performing
4 Enrollment Counselor on Mechelle Bonilla's "team"; Bertha Castillo even
5 responded to this email to justify her absence from this "blitz". Enrollment
6 Counselor Fran Beadles also called in from the Palm Desert campus to
7 Mechelle Bonilla on that day to voice her concerns with the email. At the
8 conclusion of the telephone conversation she was berated in the Downtown
9 office by Mechelle Bonilla and Alison Herring for being a "nuisance" and was
10 also referred to as an "idiot".

11
12 23) The Plaintiff received an overnight Federal Express package dated June 14th,
13 2007 from April Alcorn thanking him for bringing his workplace concerns to
14 her attention and that she would be contacting him at a later time to "discuss
15 the findings".

16
17 24) At the end of June 2007 the plaintiff was reprimanded by Mechelle Bonilla for
18 his attire on a casual Friday (flip flops, jeans, and a t-shirt). This action was
19 discriminatory and retaliatory since Alison Herring, Tiffany Jones, and
20 Davina Mendoza had all worn the same attire [as well as tank tops] and were
21 previously unpunished [not limited to "casual Friday"].

1 25) Plaintiff immediately contacted April Alcorn to notify her of his concerns
2 regarding the bias and harassment by Mechelle Bonilla in relation to the
3 casual Friday dress code.

4
5 26) On the 2nd of July, 2007 the Plaintiff was asked by Mechelle Bonilla to search
6 the websites for the dress code, because she was "too busy". Plaintiff could
7 not find any information on the company websites regarding the dress code,
8 neither could Mechelle Bonilla.

9
10 27) The situation of harassment, which was informed to April Alcorn, (who had
11 promised to get back to the Plaintiff in 2 weeks) was not resolved in the time
12 frame that April Alcorn had communicated via telephone conversation, which
13 was to be the 6th of July, 2007. This date had originally been set much earlier
14 via telephone conversation by April Alcorn.

15
16
17 28) The Plaintiff was extremely stressed out over the situation, and had
18 communicated this to April Alcorn, as well as his manager, Mechelle Bonilla,
19 on several occasions via email, telephone and one on one conversation.

20
21 29) The Plaintiff's stress increased daily soon after the original harassment in
22 March 2007. Plaintiff began grinding his teeth, vomiting, and receiving
23 stomach pains in response to the hostile work environment.

1 30) Plaintiff decided to see Dr. Calixto on July 3rd, 2007 at Beautiful Smile
2 Dentistry to seek advice on how to stop grinding his teeth.

3
4 31) Plaintiff was told in early July by April Alcorn via telephone conversation that
5 she had completed her investigation and the issue would be resolved by the
6 12th of July, 2007.

7
8 32) Plaintiff received an email from April Alcorn on the 12th of July, 2007 at 9:47
9 a.m. stating that she had "submitted the investigation documentation to my
10 management team for review", which was contrary to her previous promise of
11 resolution on such date. Plaintiff immediately telephoned April Alcorn in
12 response to this contradiction and she assured him that this would finally be
13 resolved within twenty four hours. Plaintiff again voiced his distress to April
14 Alcorn regarding the hostile work environment and harassment that he
15 continued to endure.

16
17 33) Plaintiff was contacted, by Angie Jibben, and told that he should take a leave
18 of absence during an afternoon call on July 12th 2007. Defendant stated that
19 he would prefer to wait for the resolution which was promised to him by April
20 Alcorn, thanked her for the offer, and said that he would consider this an
21 option should the need dictate so. The offer was never retracted, and was
22 again encouraged before the completion of the telephone call by Angie Jibben
23 as a solution to the Plaintiff's endured stress and harassment from the
24 company.

1
2
3 34) Plaintiff did not receive any type of notification of resolution from April
4 Alcorn or any other interested parties regarding his claims against the
5 company by one o'clock the afternoon of July 13th. When Plaintiff attempted
6 to contact April Alcorn after 1:00 on the 13th of July, 2007 a gentleman
7 [whose name he did not recall] answered her personal work line. He
8 attempted to pry the Plaintiff for information regarding his claims and agreed
9 to leave a message for her.

10
11 35) On July 13th, 2007 at 6:00 p.m., the Plaintiff did not receive any information
12 regarding his claims against the company and the issue still had not been
13 resolved as was communicated to him by April Alcorn.

14
15
16 36) On July 13th, 2007, based upon the mental stress, and the tooth grinding
17 condition which started soon after the stressful work environment at the
18 Defendant's location, the Plaintiff decided to take the leave of absence offered
19 earlier by Angie Jibben. The Plaintiff felt that this would allow for some
20 needed rest and also allow the defendant even more time to resolve the hostile
21 working conditions that were stressing him out.

22
23 37) On July 13th, 2007, the Plaintiff notified April Alcorn and Mechelle Bonilla
24 via email that he would take a 10 day non-paid vacation in order to provide

1 them enough time to rectify the situation. He provided his personal email
2 account, should they need to contact him.

3
4 38) On July 16th, 2007 the Plaintiff left for vacation in an attempt to alleviate his
5 stress and allow the defendant time to resolve the work environment issue.

6
7 39) While the Plaintiff was on Leave of Absence, he received three overnight
8 Federal Express packages were left at his door from April Alcorn. The first
9 package was dated July 17th, 2007, and stated in a letter that he needed to
10 return to work no later than Thursday, July 19th, 2007 at his regularly
11 scheduled work time. "Failure to report to work by the designated date will
12 leave us no other alternative but to accept your voluntary resignation." The
13 Plaintiff never received any information pertaining to this on the contact email
14 he had made available to April Alcorn and Mechelle Bonilla.

15
16
17 40) The second and third packages were dated July 19th, 2007.

18
19 41) The second letter stated, "You failed to report to work at the designated date
20 and time. Consistent with our policy, the Company has chosen to separate
21 your employment effective July 19th, 2007."

1 42) The third and final letter stated, "Please be advised that the Apollo Group, Inc.
2 has reviewed your concerns and we find no evidence to support any findings
3 of the San Diego Enrollment Department violating Company policies or
4 procedures as outlined by your allegations."

5
6 **LEGAL CLAIMS**

7
8 **FIRST CAUSE OF ACTION**

9 *RETALIATION*

10 1986, Congress added anti-retaliation protections to the False Claims Act § 3729. These
11 provisions, which did not exist previously, are contained in 31 U.S.C. Sec. 3730(h):

12 Any employee who is discharged, demoted, suspended, threatened, harassed, or in
13 any other manner discriminated against in the terms and conditions of
14 employment by his or her employer because of lawful acts done by the employee
15 on behalf of his employer or others in furtherance of an action under this section,
16 including investigation for, initiation of, testimony for, or assistance in an action
17 filed or to be filed under this section, shall be entitled to all relief necessary to
18 make the employee whole.

19
20 **SECOND CAUSE OF ACTION**

21 *RETALIATION (Under Title VII)*

22 Title VII of the 1964 Civil Rights Act and the amendment in 1991 of the Civil Rights
23 Act.

1 **THIRD CAUSE OF ACTION**

2 *WRONGFUL TERMINATION*

3
4 **FOURTH CAUSE OF ACTION**

5 *FALSE IMPRISONMENT*

6
7 **FIFTH CAUSE OF ACTION**

8 *INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS*

9
10 **SIXTH CAUSE OF ACTION**

11 *DEFAMATION*

12
13 **SEVENTH CAUSE OF ACTION**

14 *EQUAL PAY*

15
16
17
18
19
20 **CONCLUSION**

21
22 The Plaintiff discovered that the Defendant was required by federal law to not use quotas
23 as part of its student recruitment process. When the Plaintiff asked the Defendant to cease
24 and desist, the Defendant retaliated via harassment and eventually terminated the

1 Plaintiff. Harassing and discriminatory actions by the defendant included, but were not
2 limited to Equal Pay discrimination (arbitrarily cutting the Plaintiff's salary) and creating
3 working conditions to intentionally inflict emotional distress.

4
5 **RELIEF REQUESTED**
6
7

- 8 1- Trial by jury on all issues triable by jury
9 2- Actual (compensatory) damages to in the amount to be determined by a jury
10 3- Maximum Statutory damages
11 4- Punitive damages in the amount of \$250,000, or the maximum allowable by law.
12 5- Costs related to bringing this action, including reasonable attorney fees.
13 6- Leave to amend this complaint pursuant to F.R.C.P 15(a), once discovery in this action
14 has been completed
15 7 -Any other relief as this honorable court deems just, proper and equitable
16
17
18

19 Dated: 12/27/2007

20 12/27/2007

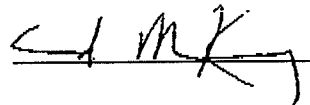
21
22
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24

Chad McKinney

EXHIBIT 2



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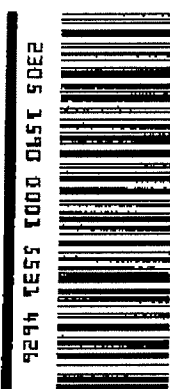
U.S.A.

To/Destination:

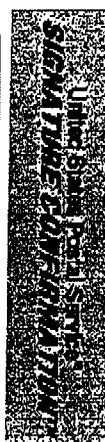
University of Phoenix
Attention of: Kyle Flynn
3890 Murphy Canyon Rd.
San Diego, CA 92123

From/Expéditeur:

Chad McKinney
6366 Madeline St #61
San Diego, CA 92115



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PROOF OF SERVICE**McKinney v. Apollo Group, Inc., et al.
USDC, Southern – Case No. 07-CV-2373**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On September 9, 2008, I served, in the manner indicated below, the foregoing document described as **EXHIBITS TO DECLARATION OF KYAN FLYNN IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

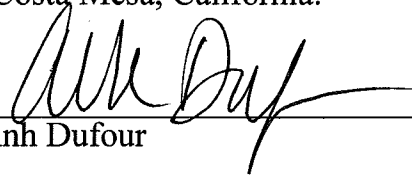
Chad McKinney 6266 Madeline Street, Apt. #61 San Diego, CA 92115	Plaintiff, Pro Se Tel: (619) 634-3566 TRACKING # 798508102292
United States District Court Attention: Hon. Judge William Q. Hayes Courtroom 4 940 Front Street, Room 4290 San Diego, CA 92101-8900	Courtesy Copy Tel: (619) 557-5600 TRACKING # 792104054237

I am employed in the office of a member of the bar of this court at whose direction the service was made.

☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 9, 2008, at Costa Mesa, California.



Anh Dufour